

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-25, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 6,032,194 issued to Gai et al. (hereinafter, Gai et al.), in view of U.S. Patent Application Publication 2004/0047320, by Eglin, (hereinafter, Eglin). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

#### **REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teaching. Second, there must be a reasonable expectation of success. **Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

See MPEP at § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added). Further, MPEP § 2143.01 states that "the mere fact that

references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a *suggestion or motivation in the reference to do so*'" (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP § 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion..., " citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**I. The Proposed Combination of Gai et al. and Eglin Does Not Render Claims 1-25 Unpatentable**

The Applicant now turns to the rejection of claims 1-25 as being unpatentable over Gai et al. in view of Eglin. The Applicant notes that the proposed combination of Gai et al. and Eglin forms the basis for all of the pending rejections.

**A. The Proposed Combination Does Not Teach or Suggest "determining at least one available switch port having a**

**capability to handle first local area network, said first local area network having a first default switch port”**

With regard to the rejection of independent claim 1 under Gai et al., the Applicant maintains that the combination of Gai et al. and Eglin does not disclose at least the limitation of “determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port,” as recited by the Applicant in independent claim 1. The Applicant acknowledges the arguments put forth by the examiner in the Final Office Action. However, the applicant also notes that no additional arguments supported by references have been introduced into the Final Office Action over the Office Action mailed on January 24, 2007. The Applicant fails to see how the arguments of the Final Office Action are being supported by Gai et al. in view of Eglin to anticipate the Applicant’s claim 1. In light of this, the Applicant respectfully maintains its stance and restates the detailed arguments set forth in the Office Action mailed on January 24, 2007.

The Applicant maintains that the combination of Gai et al. and Eglin does not disclose at least the limitation of “determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port,” as recited by the Applicant in independent claim 1. More specifically, Gai et al. does not teach “determining at least one available switch port having a capability to handle first local area network”.

The Final Office Action refers for support in Gai et al, col.7, lines 20-30, to the

following:

Network 100 further includes a plurality of servers 112a-112c, such as file servers, print servers, etc., each coupled to the local port 118 of one or more access or backbone switches. Each LAN 102-109 includes one or more hosts or end stations (not shown) that may source or sink data frames to one another or to the servers 112a-112c over the network 100. One or more routers 130 and 131 may also be provided to add functionality to network 100. Preferably, each router 130, 131 is coupled to a backbone switch, such as backbone switches 120 and 121, by a corresponding link 128

. The Applicant submits that the above paragraph from Gai et al. referenced in the Final Office Action does not indicate or suggest that Gai et al. teach any part of "determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port". Based on the above paragraph, Gai et al. simply describes a network topology. The mere fact of referring to a LAN that "may source or sink data frames to one another or to the servers" does in no way imply "a capability to handle first local area network" as recited by the Applicant. Furthermore, there is no suggestion that Gai et al. discloses, whether implicitly or explicitly, the Applicant's claimed limitation of "determining at least one available switch".

Furthermore, the Final Office Action refers for support to Gai et al, col. 10, lines 49-67 and col. 11, 1-15. Gai et al. disclosed at col. 10, lines 49-53, the restriction, "For all LANs coupled to both an access switch and a backbone switch, operation of the above commands 300, 320, 330 also results in the respective backbone switch becoming the designated switch, rather than the access switch".

The Final Office Action, however, does not provide any basis for why this passage is relevant to "determining at least one available switch port having a capability to handle a first local area network". Accordingly, the Applicant respectfully submits that the rejection be withdrawn.

The Examiner further refers to col. 11, line 8-15 and lines 41-44 in Gai et al. to stipulate that "said first local area network having a first default switch" in the Applicant's limitation is unpatentable over Gai et al. The applicant points out that no mention of a local area network is made in the cited reference. Hence, the applicant fails to see the applicability of this reference.

Additionally, the Examiner states in the Final Office Action (page 4) that Gai et al. does not specifically disclose a hybrid wired/wireless local area network, as called for in independent claim 1 by the Applicant. The Applicant respectfully agrees.

The Applicant therefore, respectfully submits that Gai et al., alone or in combination with Eglin, cannot teach, nor suggest "determining at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port", such as recited in claim 1.

Accordingly, the proposed combination of Gai et al. and Eglin does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent claims 9 and 17 are similar in many respects to the method disclosed

in independent claim 1. Therefore, the Applicant submits that independent claims 9 and 17 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-8, 10-16 and 18-25**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 9 and 17 under 35 U.S.C. § 103(a) as being anticipated by Gai et al. in view of Eglin has been overcome and request that the rejection be withdrawn. Additionally, claims 2-8, 10-16 and 18-25 depend from independent claims 1, 9 and 17, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-25.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-25 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Attorney at (312) 775-8105.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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